



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
CECILIA ANDREW BUTCHER)

For Appellant: Cecilia Andrew Butcher,
in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

Paul J. Petrozzi
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Cecilia Andrew Butcher, formerly Cecilia Fite, against a proposed assessment of additional personal income tax in the amount of \$149.00, plus interest, for the year 1975.

Appeal of Cecilia Andrew Butcher

The issues to be decided are: (1) whether appellant qualified as a head of household in the year in issue; and (2) whether respondent properly imposed interest on the proposed deficiency.

Appellant and her former husband separated on April 6, 1975, but did not obtain a final divorce until sometime during 1976. Nevertheless, on her 1975 personal income tax return, appellant specified that her son, Doyle Lee Fite, qualified her for head of household status. Appellant also had a dependent daughter.

Respondent denied head of household status because appellant was still married at the end of 1975 and had not been separated from her husband for the entire year of 1975. Instead, respondent allowed dependent exemption credits for both children.

Section 17042 of the Revenue and Taxation Code provides:

For purposes of this part, an individual shall be considered a head of household if, and only if, such individual is not married at the close of his taxable year

The phrase "not married", as it is used in that statutory provision, is defined to include "[a]n individual who is legally separated from his spouse under a final decree of divorce or a decree of separate maintenance" (Emphasis added.) (Rev. & Tax. Code, § 17043, subd. (b).) In addition, a person who is legally married may still be considered as not married for purposes of head of household status if during the entire taxable year such individual's spouse is not a member of the taxpayer's household. (Rev. & Tax. Code, § 17173, subd. (c) (3) .)

Since appellant's spouse was a member of her household during a portion of 1975, and since she was not legally separated from him under a final decree of divorce or separate maintenance at the end of that year, she was not eligible to file as a head of household for the taxable year 1975. (See Appeal of Robert J. Evans, Cal. St. Bd. of Equal., Jan. 6, 1977; Appeal of Manciel L. Smith, Cal. St. Bd. of Equal., May 10, 1977; Appeal of Dennis M. Vore, Cal. St. Bd. of Equal., July 31, 1973.)

Appellant also protested respondent's addition of interest to the proposed assessment. The interest was imposed pursuant to section 18688 of the Revenue and Taxation Code, which provides, in pertinent part:

Appeal of Cecilia Andrew Butcher

Interest upon the amount assessed as a deficiency shall be assessed, collected and paid in the same manner as the tax ... from the date prescribed for the payment of the tax until the date the **tax is** paid.
(Emphasis added.)

This board has previously held that the payment of interest on an assessed deficiency is mandatory pursuant to the clear language of section 18688, and cannot be waived. (Appeal of Amy M. Yamachi, Cal. St. Bd. of Equal., June 28, 1977; Appeal of Audrey C. Jaegle, Cal. St. Bd. of Equal., June 22, 1976; Appeal of Allan W. Shapiro, Cal. St. Bd. of Equal., Aug. 1, 1974.) The interest is not a penalty imposed on the taxpayer; it is merely compensation for the use of money, which accrues upon the deficiency regardless of the reason for the assessment. (Appeal of Amy M. Yamachi, supra; Appeal Of Audrey C. Jaegle, supra.)

For the reasons stated above, respondent's action in this matter must be sustained.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

Appeal of Cecilia Andrew Butcher

IT :IS **HEREBY** ORDERED, ADJUDGED AND DECREED,
pursuant to section 18595 of the Revenue and Taxation Code,
that the action of the Franchise Tax Board on the protest of
Cecilia Andrew Butcher against a proposed assessment of addi-
tional personal income tax in the amount of **\$149.00, plus**
interest, for the year 1975, be and the same is hereby **sus-**
tained.

Done at Sacramento, California, this **10th** day of
April , 1979, by the State Board of Equalization.

William L. Byrnes, Chairman
Philip Chen, Member
Ernest W. Wernburg Jr., Member
Chas. Reilly, Member